



Pat # 29

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Mario Guillen)

Serial No.: 09/473,386)

Filed: December 28, 1999)

Title: Trailing Interspecific Impatiens)

Group Art Unit: 1661

Examiner: J. Hwu

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TECH CENTER 1600/2900

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

DECLARATION of SCOTT TREES UNDER 37 C.F.R. SECTION 1.132

Sir:

I, Scott Trees, declare:

1. I have been employed with Pan American Seed and Ball FloraPlant both of which are divisions of Ball Horticultural Company, the assignee of the present invention, for twenty-four years. During the period of my employment with Ball Horticultural Company, I have been responsible for breeding several products including *Pelargoniums*, *Impatiens hawkerii*, *Verbena*, *Angelonia* and others.

2. Mr. Guillen, the inventor of the above-identified invention, and myself are colleagues.

3. I have been an ornamental plant breeder for thirty years and have conducted breeding with the following plant species: *Pelargoniums*, *Impatiens hawkerii*, *Verbena*, *Angelonia*, *Lantana*, *Nemesia*, *Diascia*, *Sutera* and others.

4. My educational background is as follows: I have a Ph.D. Genetics from the University of California at Davis (1974).

5. I have read the above-identified application and I have read the Office Action dated January 28, 2003. I understand that claims 13-24 and 26-30 are rejected under 35 U.S.C. Section 112, first paragraph, as not being described in the specification in such a way as to reasonably convey to one skilled in the art of plant breeding that at the time the application was filed that Mr. Guillen had possession of the claimed invention. As I understand it, what the Examiner is arguing is that although the specification describes interspecific *impatiens* plant 2245B, it does not demonstrate that Mr. Guillen had possession of all *impatiens* plants having a trailing habit produced by crossing *Impatiens flaccida* with *Impatiens hawkeri*.

6. As I understand it, the above-identified invention relates to a unique interspecific crosses between *Impatiens flaccida* and *Impatiens hawkeri* and plants produced from that cross that exhibit a trailing plant habit. Two examples of plants produced from this unique interspecific cross are 2245B and 2257B (each of these plants is described in the above-identified application).

7. I have seen approximately 100 *impatiens* plants produced from the above-described unique interspecific cross that exhibit a trailing plant habit bred by Mr. Guillen. I have seen these plants at Arroyo Grande, CA as well as West Chicago, IL.

8. The level of skill possessed by ornamental plant breeders, such as myself, is high. Any ornamental plant breeder, after making a cross, selects plants resulting from a cross based on certain ornamental traits of interest, including, but not limited to flower color, flower size and plant habit. I am, as well as all other plant breeder, well versed in the types of plant habits that can be selected for a plant, including, but not limited to, a recumbent habit, an upright habit, semi-trailing habit, trailing habit, etc. The phenotypic characteristics associated with a trailing habit are well-known to plant breeders and identifying and selecting for plants exhibiting a trailing habit is routine for breeders such as myself.

9. It is my opinion that any ornamental plant breeder, including myself, using his/her routine skill and knowledge coupled with the description of the unique interspecific cross and the examples provided in the specification of the above-identified application, would not have any difficulty in identifying plants having a trailing plant habit produced from the unique interspecific cross as described in the above-identified application and understanding that such plants are contemplated within the scope of the present invention.

10. I hereby declare that all statements made herein are of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that the statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both under Section 1001 of Title 18 of the United States Code and such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Scott Trees
Scott Trees

June 5, 2003
Date